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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF WASHINGTON

10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12
13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.
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17 CRAIG MICHAEL BERRY,

18 Defendant.
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1:23-CR-02058-SAB

PLAINTIFF'S SENTENCING

MEMORANDUM

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21 The United States of America, by and through Vanessa R. Waldref, United
22 States Attorney for the Eastern District of Washington, and Michael D. Murphy,
23 Assistant United States Attorney, submits the following Sentencing Memorandum.
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25 On July 1, 2024, Defendant pleaded guilty in open court to the fifteen counts
26 charged in an Indictment (ECF 1) filed October 11, 2023. ECF 30. Defendant stands
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1 convicted of Production and Attempted Production of Child Pornography in
2 violation of 18 U.S.C. §§ 2251(a) and (e) in Counts 1, 3, 5, 7, 9, 12 and 14 and of
3 Online Enticement and Attempted Online Enticement of a Minor in violation of 18
4 U.S.C. § 2422(b). *Id.*

7 I. BASE OFFENSE LEVEL AND ENHANCEMENTS

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9 The draft PSIR provides for a total offense level of 43, criminal history
10 category of I, with a guideline range of incarceration of life to be followed by 5
11 years to life of supervised release. Draft PSIR, ECF 34, ¶ 208. Further, the United
12 States agrees that the Defendant qualifies for a third level reduction in offense level
13 based upon his timely notice of an intention to plead guilty and hereby moves the
14 Court for such a reduction. *See* ECF 34, ¶ 134.

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18 II. DEPARTURES AND OBJECTIONS

19 The United States does not have any objections to the draft PSIR. The United
20 States does seek a variance in this matter. Defendant's offense level, even with the
21 downward adjustment for responsibility, exceeds the maximum offense level of 43
22 and is therefore treated as though it were that highest possible offense level. ECF
23 34, ¶¶ 132-135. The Guidelines are the starting point and the initial benchmark for
24 the sentencing process. *Kimbrough v. United States*, 128 S. Ct. 558 (2007). The
25 Court "take[s] into account the totality of the circumstances" to determine whether a
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1 sentence is reasonable. *Gall v. United States*, 128 S. Ct. 586, 597 (2007). Further,
2 upon appellate review, “the scheme of downward and upward ‘departures’ [is]
3 essentially replaced by the requirement that judges impose a ‘reasonable’ sentence.”
4 *United States v. Ellis*, 641 F.3d 411, 421 (9th Cir. 2011). Although the Guidelines
5 indicate a sentence of life imprisonment for an offense level 43 and such a sentence
6 is available as to Counts 2, 4, 6, 8, 10, 11, 13 and 15 and an effective life sentence is
7 available should the Court impose consecutive maximum sentences for any two of
8 counts 1, 3, 5, 7, 9, 12 and 14, the United States contends that a reasonable sentence
9 under the facts of this case is one of 360 months, or 30 years, imprisonment
10 followed by a lifetime of supervised release.
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14 “[A] sentencing court may rely on any evidence relating to a defendant’s
15 background, character, and conduct when considering the sentencing factors found
16 in 18 U.S.C. § 3553(a).” *United States v. Christensen*, 732 F.3d 1094, 1104 n. 2 (9th
17 Cir. 2013). Sentencing courts are permitted to consider the widest possible breadth
18 of information about a defendant to ensure that the punishment will suit not only the
19 offense, but also the individual defendant. *Pepper v. United States*, 562 U.S. 476,
20 488 (2011).
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22 23 III. SENTENCING FACTORS UNDER 18 U.S.C. §3553(a)

24 25 1. The nature and circumstances of the offense and the history and 26 characteristics of Defendant. 27 28

1 Defendant engaged in a pattern of enticing young girls, including friends of his
2 daughter, and then providing them with items of value in exchange for nude images
3 and videos of sexual conduct. Defendant bought fourteen to sixteen-year old girls
4 alcohol, vape pens and cartridges for those pens, including marijuana cartridges, and
5 other items in order to obtain child pornography. In addition, he attempted to demand
6 videos and images from some of the girls when they were no longer willing to
7 participate. ECF 34, ¶ 22. Defendant also attempted in person physical sexual contact
8 with some of the girls and, in fact, engaged in sexual contact with some of them. *Id.*,
9 ¶¶ 20, 21, 32, 35, 36, and 43.

10 At the time of this conduct, which occurred over a period of about one and a
11 half years, Defendant was in his mid-thirties. ECF 1, ECF 34, p. 2. He is a high school
12 graduate and father of three children with steady employment. ECF 34, ¶ 156-57, 170
13 and 171. He has no prior criminal history. *Id.* at ¶¶ 139-140, 145.

14 2. The need for the sentence imposed to reflect the seriousness of the offense,
15 promote respect for the law, and to provide just punishment.
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17 A sentence of thirty years imprisonment, followed by a lifetime of supervised
18 release, would appropriately reflect the seriousness of the offense and promote respect
19 of the law in the view of the United States. However, in this case some of the victims
20 and their families are anticipated to assert that the maximum legal sentence is the
21 appropriate and just punishment. *See* ECF 34, ¶¶ 45. There can be no question that
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1 Defendant's actions have not only affected the victims and their families and will have
2 lasting effects. *Id.* ¶¶ 45-48.

3 3. The need for the sentence imposed to afford adequate deterrence to criminal
4 conduct.

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6 A sentence of thirty years imprisonment would deter any further criminal
7 conduct by Defendant, particularly given his acceptance of responsibility and the fact
8 that it would be substantially greater than the mandatory minimum sentence of fifteen
9 years imprisonment.
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11 4. The need for the sentence imposed to protect the public from further crimes
12 of Defendant.

13 A sentence of thirty years imprisonment followed by a lifetime of supervised
14 release would protect the public from further crimes by Defendant for a substantial
15 period of time. “[T]he particularly high danger of recidivism of sex offenders is well-
16 known”. *United States v. Garner*, 490 F.3d 739, 743 (9th Cir. 2007). “When
17 convicted sex offenders reenter society, they are much more likely than any other type
18 of offender to be rearrested for a new rape or sexual assault.” *McKune v. Lile*, 536
19 U.S. 24, 33-34 (2002). The risk of recidivism posed by sex offenders is “frightening
20 and high.” *Id.* However, a sentence of thirty years imprisonment will protect the
21 public while also diminishing the potential for recidivism by demonstrating to
22 Defendant the significant consequences for this sort of criminal misconduct.
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- 1 5. The need for the sentence imposed to provide Defendant with needed
2 educational or vocational training, medical care, or other correctional
3 treatment in the most effective manner.

4 A sentence of thirty years imprisonment must provide Defendant with effective
5 correctional treatment. Further, regardless of the term of imprisonment imposed, this
6 Court should impose a term of supervised release that extends for the life. “Supervised
7 release fulfills rehabilitative ends, distinct from those served by incarceration.” *United*
8 *States v. Johnson*, 529 U.S. 53, 59 (2000). In other words, supervised release is not a
9 punishment in lieu of incarceration. *See United States v. Granderson*, 511 U.S. 39, 50
10 (1994). If being on supervised release were the punitive equivalent of being in prison,
11 and if it served the just desserts function, there would be no need to put most criminals
12 in prison. *See United States v. Irej*, 612 F.3d 1160, 1210 (11th Cir. 2010). Given
13 Defendant’s pattern of conduct toward multiple minor girls, supervision for life is
14 appropriate regardless of the sentence of incarceration imposed to fulfill the
15 rehabilitative ends of providing sex offender treatment and post-correctional
16 vocational assistance.
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22 IV. GOVERNMENT’S SENTENCING RECOMMENDATION

23 The government recommends that the Court impose a sentence of incarceration
24 of three hundred and sixty months (thirty years) followed by a term of supervised
25 release for life and no criminal fine. Defendant must pay a \$1,500 Special Penalty
26 Assessment and may be required to pay a \$5,000 Special Penalty Assessment per
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1 count pursuant to the JVT A. ECF 34, ¶ 208. The United States does not request the
2 imposition of a fine given the penalty assessments required by law and the length of
3 sentence sought. Restitution is mandatory; however, no requests for restitution have
4 been received at the time of the filing of this document.
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6 DATED this 25th day of November, 2024.

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8 VANESSA R. WALDREF
United States Attorney

9 s/ Michael D. Murphy
10 MICHAEL D. MURPHY
Assistant United States Attorney
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15 **CERTIFICATE OF SERVICE**

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17 I hereby certify that on November 25, 2024, I electronically filed the foregoing
18 with the Clerk of the Court using the CM/ECF System, and a copy was emailed to the
19 counsel of record in this case.
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21
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